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Date: March 22, 1999

Case Nos.: 1998-ERA-40 and 1998-ERA-42

In the Matters of

HARRY L. WILLIAMS
SHERRIE G. FARVER

Complainants

v.

LOCKHEED MARTIN CORPORATION
LOCKHEED MARTIN ENERGY SYSTEMS, INC.

Respondents

BEFORE: RUDOLF L. JANSEN
Administrative Law Judge

RECOMMENDED DECISION AND ORDER
GRANTING SUMMARY DECISION

This proceeding arises under Section 211 of the Energy Reorganization Act of 1974, as amended, 42 U.S.C. 5851; Section 322 (a) (1-3) of the Clean Air Act, 42 U.S.C. 7622; Section 110 (a) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9610; Section 507 (a) of the Federal Water Pollution Control Act, 33 U.S.C. 1367; Section 1450 (I)(1) (A-C) of the Safe Drinking Water Act, 42 U.S.C. 300j-9; 42 U.S.C. 9610; Section 7001(a) of the Solid Waste Disposal Act, 42 U.S.C. 6971; and Section 23 (a) of the Toxic Substances Control Act, 15 U.S.C. 2622.

Harry L. Williams, (hereinafter Williams) filed his complaint on April 9, 1998 and Sherrie Graham Farver (hereinafter Farver) filed her complaint on April 11, 1998. The allegations in the complaints are nearly identical excepting that they have been tailored to relate to the individuals involved. On August 24, 1998, I entered an Order in which these matters were consolidated for all purposes including hearing.

The complaints allege that Williams and Farver attended a March 23, 1998 employee meeting with physicians in order to learn more about their health status concerning possible chemical

exposure resulting from their employment at Lockheed Martin Energy Systems (hereinafter LMES). Complainants allege that LMES "surreptitiously" taped the meeting after stating that a portion of the meeting would be private. It is alleged that the U.S. Department of Energy was also involved in the taping and unlawful surveillance. The Department of Energy has been previously dismissed as a party respondent based upon the granting of an earlier Summary Judgment request. Complainants state that they are leaders and members of an organization called the Coalition for a Healthy Environment which is a group of workers and residents concerned about pollution at the LMES Oak Ridge operation. Complainants state that they have a right to engage in confidential meetings in which concerns are raised about environmental issues and that they have a right to express their opinion to independent doctors relating to exposures from their workplace environment. The Complainants also allege that the illegal surveillance included a public meeting which had preceded the private meeting and that the tapings had taken place without obtaining any party's permission. Complainants further allege that the "surreptitious" taping is a violation of multiple whistleblower laws and that it invaded the medical privacy of the employees. Complainants seek compensatory and punitive damages together with attorney fees, injunctive relief, and affirmative action including an order to cease and desist from putting workers under surveillance.

On September 28, 1998, LMES and Lockheed Martin Corporation (LMC) mailed a Joint Motion for Summary Decision which was received in this office on October 1, 1998. In the same mailing, LMC filed a Motion for Dismissal. LMES and LMC submitted a brief in support of their motions. On October 5, 1998, Complainants mailed a Motion to Postpone Summary Judgment Response and also later requested a hearing postponement and a pre-hearing conference due to multiple discovery related problems. The Complainants' motions were granted and I then scheduled an on the record Pre-hearing Conference for November 17, 1998. At the Pre-hearing Conference the parameters of discovery were narrowed considerably. My Pre-hearing Conference Order of November 18, 1998 outlines the actions taken at that time. After listening to the arguments of the parties, it was my conclusion that many of the requests and interrogatories issued by Complainants were overly broad, burdensome, nonspecific and wholly irrelevant to the defined issues. Additionally, it was not my belief that any of the massive information sought could possibly lead to the discovery of any admissible evidence impacting the essential set of facts or law involved in this case. I then limited discovery to the essential facts relating to the planning of the meeting of March 23, the events at the meeting, the taping and tapes of the meeting and any alleged actions that occurred immediately after the date of the meeting. My Order in that regard disposed of all pending discovery matters excepting a Complainant's request that certain admissions be deemed admitted. Immediately following the Pre-hearing Conference, I issued an Order on November 20, 1998 which specifically directed the Complainants to respond to

the Motions for Summary Decision and also LMC's Motion for Dismissal no later than December 9, 1998. No response to either of those motions was received from either of the Complainants.

In support of the LMES and LMC Motion for Summary Decision, there was attached verified declarations of Marvin Yarber, D. B. Valentine, Bruce Warford, Joy Lee and Jill Freeman. In addition, excerpts from depositions of Donzietta Hill and William Noe together with interrogatory answers of D. R. Fudge and Ronnie Headrick were also submitted. In addition to the above, there was also produced a requisition request for use of Pollard Auditorium which was to include the use of an overhead projector, an LCD panel to do computer projections on a big screen, and a speaker phone. (See Exhibit A attached to the declaration of Joy S. Lee)

STATEMENT OF FACTS

A Summary Decision Order shall include a statement of the Findings of Fact on all issues presented. 29 C.F.R. §18.41(a)(2)(i). The pleadings and the attachments to the Motion for Summary Decision demonstrate the facts in this case to be as follows. Three physicians had been hired by LMES to study health concerns expressed by former and present employees which may have resulted from exposures to toxic materials at the Oak Ridge Plants. The March 23, 1998 meeting was requested by the physicians in order to discuss these findings with the employees. Marvin Yarber, a former LMES employee, was requested to obtain a site for a public meeting and he arranged for use of Pollard Auditorium of Oak Ridge Associated Universities. At the time these preparations were made, Mr. Yarber knew nothing about a private meeting which was to follow the public meeting. Donzietta Hill, an employee of LMES, was also unaware of a private meeting. The meeting was open to the general public. Mr. Yarber's requisition was based upon use of the auditorium for one-half of a day only. (Exhibit A to Yarber and Lee's declarations) LMES' management who attended the meeting did not learn of plans for a private meeting until after the public portion of the program had concluded and one of the physicians announced that the doctors would meet in the front of the auditorium with employees participating in the study. At the time that announcement had been made, Mr. Yarber had already left the auditorium.

At the time that Mr. Yarber made the initial request for use of the auditorium with Joy Lee, who was the LMES' conference manager, he also had asked for an overhead projector to be used by the doctors and an LCD panel by which computer screens could be projected onto the large overhead screen. In addition he asked for a speaker phone because one of the physicians participating in the study could not attend the meeting in person. Ms. Lee's declaration also indicates that a hand-held tape recorder was used and that it had been requested after they had arrived at the auditorium. No request for recording equipment had been made by

Mr. Yarber prior to the day of the event. Ms. Lee made a special request of the company to provide personnel to operate the equipment at the meeting because of the sophisticated nature of the LCD panel.

Some time before the meeting was scheduled to begin, Donzietta Hill, an employee of LMES and one of the participants at the meeting, tripped on stairs, fell forward and happened to have been caught by Mr. Yarber who was going up the stairs in the opposite direction. Ms. Hill passed out and stopped breathing immediately following the incident. Mr. Yarber called to the physicians at the front of the auditorium who then administered CPR and revived her. A 911 call was made for emergency assistance. As Ms. Hill was being prepared for transport to the hospital, Mr. Yarber advised her that he would record the meeting for her later use and it is Mr. Yarber's recollection that she nodded in the affirmative so as to give approval to the recording action. Ms. Hill does not presently have a recollection of that conversation with Mr. Yarber but stated during a deposition that she would have accepted his offer to tape the meeting for later use. She considers Mr. Yarber to be a forthright and honest individual.

Following the incident with Ms. Hill, Mr. Yarber requested that Ms. Lee attempt to locate a tape recorder for use in taping the meeting. Bruce Warford who was an employee of Oak Ridge Associated Universities was asked by Ms. Lee to find a tape recorder and Mr. Warford heard Mr. Yarber state that his intention was to tape the meeting for the benefit of Ms. Hill. Mr. Warford located a Radio Shack model recorder in an adjacent University building and brought the recorder to the auditorium. He plugged the recorder into the sound system through the consul, put a tape into the recorder and gave the recorder and a few extra tapes to Mr. D.B. Valentine. The recorder would have recorded only sound picked up by the microphones connected to the sound system. Mr. Yarber said nothing to either Ms. Lee or Mr. Warford about a private meeting and neither of those individuals were aware of a private meeting until the complaints in this case had been filed. Mr. Yarber knew nothing about a private meeting until a week or two after the meeting was held.

D. B. Valentine, is an Electronic Instrumentation Technician employed by LMES. He was given the tape recorder by Mr. Warford. Mr. Warford advised Mr. Valentine that the recording was a last minute request. The work order given to Mr. Valentine does not indicate a request for recording equipment and he did not bring any recording equipment to the auditorium. For the most part, Mr. Valentine remained in the back of the auditorium and was in plain view of everyone attending the meeting. He did not attempt to hide the tape recorder or conceal the fact that he was taping the meeting. He has no recollection of anyone announcing a private meeting which was to follow the public meeting. Mr. Valentine had to leave the auditorium at approximately 3:00 p.m. at which time he

labeled and dated the tapes and left them sitting on a table next to the cassette recorder. He did not know what to do with the tapes since no one had given him any prior instruction. When he left the auditorium, the tape recorder was still running and it was in plain view of anyone in the auditorium.

Mr. Yarber denies that the recordings were surreptitious in any fashion. He told Dr. Lockey that the meeting would be recorded for the benefit of Ms. Hill and the physician did not object. Secondly, while at the hospital, he told Donzietta Hill's husband and also another LMES employee by the name of Linda Cox, who was also one of the participants in the study that he was recording the meeting for the benefit of Ms. Hill. After Mr. Yarber left the hospital, he returned to his work area and did not go back to the auditorium to monitor the recording equipment or to retrieve the tapes.

A few days after Ms. Hill was released from the hospital, she inquired of Mr. Yarber if he would retrieve the tapes for her use and also for the use of Ms. Cox who had missed the meeting since she was at the hospital with Ms. Hill. Mr. Yarber, however, was unable to locate the tapes. Shortly after Ms. Hill had contacted Mr. Yarber, Harry L. Williams also telephoned Mr. Yarber and inquired as to why the meeting had been recorded. Mr. Yarber advised him that it was for the benefit of Ms. Hill. Mr. Williams indicated that he had no reason to doubt his representation. No member of LMES has ever located the tapes. It was later learned by the Respondents that a member of the Coalition for a Healthy Environment of which the Complainants, Ms. Hill and Ms. Cox were all members, had possession of the tapes and that several members of the organization had listened to the tapes. The tapes are apparently now under seal in the Anderson County Circuit Court. Since the date of the meeting, LMES has never had possession of the tapes and they have never seen nor heard the tapes as of the present time.

Neither Mr. Yarber nor Mr. Valentine were ever informed that a private meeting was to follow the public meeting and that, therefore, some portion of the meeting should not have been taped. Ms. Hill who was a participant at the meeting was unaware that a private meeting was to follow the public meeting. The record indicates that there was not an announcement following the public meeting that everyone should leave the room excepting the affected employees.

CONCLUSIONS OF LAW

The standard for granting summary decision in whistleblower cases is set forth at Title 29, Section 18.40(d) of the Code of Federal Regulations. Analogous to Rule 56 of the Federal Rules of Civil Procedure, Section 18.40(d) permits an Administrative Law Judge to recommend a summary decision where there is no genuine

issue as to any material fact and the moving party is entitled to judgment as a matter of law. See Gillilan v. Tennessee Valley Authority, 91-ERA-31, at 3 (Sec'y, Aug. 28, 1995); Flor v. United States Dept. of Energy, 93-TSC-1, at 5 (Sec'y, Dec. 9, 1994). The party opposing a motion for summary decision "must set forth specific facts showing that there is a genuine issue of fact for the hearing." 29 C.F.R. § 18.40(c). See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986); Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986). Only disputes over facts that might affect the outcome of the suit will properly prevent the entry of a summary decision. Anderson, 477 U.S. at 251-52. In determining whether a genuine issue of material fact exists, however, the fact finder must consider all evidence and factual inferences in the non-moving party's favor. Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986); Held v. Held, 137 F.3d 998, 999 (7th Cir. 1998).

Although Motions for Summary Judgment are viewed with extreme caution in the Sixth Federal Circuit, they should be used only where there is found no genuine issue of material fact to litigate. Poller v. Columbia Broadcasting System, Inc., 368 U.S. 464, 82 Sup. Ct. 486 (1962); Rogers v. Peabody Coal Co., 342 F.2d 749 (6th Cir. 1965). However, a Summary Judgment Motion changes where a defendant submits exhibits, affidavits, depositions and a memorandum of law in support of its motion and a Complainant fails to submit evidence in any form which controverts defendant's motion or assertion of fact. Gilmore Proctor & Gamble Co., 417 F.2d 615 (6th Cir. 1969); Ryan v. F. W. Woolworth Co., 289 F.Sup. (Southern District of Ohio 1967); Kemper v. American Broadcasting Companies, Inc., 365 F.Sup. 1275 (1973). Since the Complainants have failed to respond to the Motion for Summary Decision, the evidence submitted by Respondents must be taken as true. Kemper, supra. Where a Respondent moves for Summary Judgment on the ground that the Complainant lacks evidence of an essential element of his claim, the Complainant is then required under Fed. R. Civ. P. 56 to present evidence of evidentiary quality demonstrating the existence of a genuine issue of material fact. Lujan v. Defenders of Wild-life, 504 U.S. 555, 112 Sup. Ct. 2130 (1992); Celotex Corp. v. Catrett, 477 U.S. 317 (1986). When considering evidence submitted by a party opposing Summary Judgment, it should be considered in the light of its content or substance rather than the form of its submission. Winskunas v. Birnbaum, 23 F.3d 1264 (7th Cir. 1994)

As was noted above, the Complainants have filed no response to the Joint Motion for Summary Decision. As the cases indicate, it was incumbent upon the Complainants to submit specific facts demonstrating the existence of a genuine issue for trial. That has not been done in this case. I am aware of the fact that it is necessary to deny a Motion for Summary Decision "whenever the moving party denies access to information by means of discovery to a party opposing the Motion." 29 C.F.R. §18.40(d). That has not occurred here. At the time of the Pre-hearing Conference in this

matter on November 17, 1998, argument was received concerning a variety of pending discovery matters. It was my conclusion that the Complainants' discovery requests were overly broad, burdensome, nonspecific and wholly irrelevant to the defined issues. Therefore, discovery was narrowed considerably. I found that the discovery responses of the Respondents were adequate and that Respondents had not denied the Complainants access to germane information.

The Complainants allege that Respondents have discriminated against them in violation of the numerous whistleblower statutes mentioned above. To establish a prima facie case under these statutes, it was incumbent upon the employee to demonstrate 1) that he/she was engaged in protected activity; 2) that he/she was subjected to an adverse employment action, and 3) that the Employer was aware of the protected activity when it took the adverse action. Bartlik v. Department of Labor, 73 F.3d 100 (6th Cir. 1996); Carroll v. Bechtel Power Corp., 91 ERA 46 (Sec'y Feb. 15, 1995); Crosby v. Hughes Aircraft Company, 86-TSC-2 (Sec'y Aug. 17, 1993). It was incumbent upon Complainants to produce sufficient evidence which would raise an inference that the protected activity was the likely reason for the adverse action. Carroll, supra.

The Respondents have conceded that attendance by the Complainants at the March 23, 1998 meeting was protected activity. Respondents strongly urge that the record is devoid of any evidence that the Complainants were subjected to any adverse employment action. The complaints make reference to:

Parag. 1. "Videotaped" surveillance;

Parag. 2. "Surreptitiously" taping the meeting after stating that it would be private;

Parag. 3. Illegally taping an initial public meeting;

Parag. 4. LMES assured Complainants and others present that the meeting would be private;

Parag. 6. Lockheed Martin "spying" on the sick workers is at best "unseemly" and an invasion of medical privacy;

Parag. 7. LMES "videotaped and broadcast" Mrs. Farver's candid comments about the company's proclivity for lying to persons presently unknown.

The adverse action element requires the Complainant to demonstrate that something adverse affecting their compensation, terms, conditions or privileges of employment occurred due to the actions of the employer, Deford v. Secretary of Labor, 700 F.2d 281 (6th Cir. 1983); Saporito v. Florida Power and Light Co., 94-ERA-35 (ARB, July 19, 1996); and that those actions were in retaliation for the Complainants having engaged in protected activity within a reasonable period of time immediately prior to the adverse action. Couty v. Dole, 886 F.2d 147 (8th Cir. 1989). The facts demonstrate that neither was there an adverse action nor was there any action taken in reprisal for the Complainants having attended the meeting of March 23. There is no evidence in this file that LMES "videotaped" the March 23 meeting. There is no evidence in this case that Lockheed Martin or any of its agents "surreptitiously" taped the March 23 meeting nor is there evidence that any representative of or agent of Lockheed Martin stated that the March 23 meeting would be private. There is no evidence in this case that the audio taping of the March 23 meeting was anything other than an attempt by the company to accommodate an employee who had fallen ill. There is no evidence whatsoever that LMES was "spying" on any sick workers. This record shows that there was no surveillance and, in fact, there was no adverse action initiated against either of the Complainants. Not only is there no discriminatory intent evidenced by the established facts but the actions initiated by the company were an accommodation to one of its employees who happened to be a member of the "affected group." I find none of the established facts, either directly or circumstantially, demonstrate a negative impact on the Complainants' work environment.

I find the complaint allegations noted above to be totally baseless. The established facts demonstrate that there was no company pre-planning for the audio taping of any private meeting. Nor was there anything surreptitious about the taping process. The tape recorder was in full view of the meeting participants in the back of the room. Mr. Yarber advised several people that the taping process was taking place. The facts show that the private meeting at the conclusion of the public meeting was an apparent impromptu session called at the direction of one of the physicians. The statements included in the declarations attached to the Motion for Summary Decision are all entirely consistent. The record contains no evidence whatsoever that LMES or LMC made any effort to conceal taping or to guard and to retrieve the tapes. In fact, the tapes were left unattended in the auditorium by Mr. Valentine and apparently removed by one of the meeting participants.

In reviewing the Respondents' motion and also the arguments and supporting declarations and documents, I find a sufficient basis to grant the Motion for Summary Decision. Interpreting the allegations in a light most favorable to the non-moving parties, I find no genuine issues of material fact. Where the non-movant bears the ultimate burden of proof, the parties must present

definite, competent evidence to rebut the motion. Kesterson v. Y-12 Nuclear Weapons Plant, 95-CAA-12 (ARB, Apr. 8, 1997) cert. to 6th Cir. 97-3570 (ARB, Jan. 1998). The Complainants have placed no definite, competent evidence into the record to rebut the motion of LMES and LMC. The established facts support the argument of LMES and LMC that the taping of the meeting was done with no malicious intent. The taping was directed by Mr. Yarber as a spur-of-the moment reaction to the medical problem of Ms. Hill in order to accommodate her and Ms. Hill accepted his proposal. Mr. Yarber was not even aware of a private meeting which was to follow the public session.

Based upon this record, the Complainants have utterly failed to demonstrate that they suffered any form of adverse employment action, and therefore, cannot establish a prima facie case of discrimination under any of the whistleblower statutes. In considering the content of the declarations, documents and deposition testimony submitted by Respondents in association with the Motion for Summary Decision, I find that there exists no genuine issue of fact for hearing relating to an adverse employment action suffered by either of the Complainants. Therefore, it is my recommendation that the Motion for Summary Decision filed on behalf of Lockheed Martin Energy Systems, Inc. and Lockheed Martin Corporation be granted and these cases be dismissed with prejudice.

LOCKHEED MARTIN CORPORATION MOTION FOR DISMISSAL

Lockheed Martin Corporation has also moved for dismissal upon the basis that the Complainants did not allege LMC to be their employer under the Energy Reorganization Act or any of the other environmental acts. The complaints make specific reference to Lockheed Martin Energy Systems and also to a generic Lockheed Martin. Nowhere in the complaints is there a specific reference to Lockheed Martin Corporation as being an employer of either Harry L. Williams or Sherrie G. Farver. Lockheed Martin Energy Systems, Inc. has previously acknowledged that it is the properly named party respondent in this proceeding.

Since the Complainants have not alleged that Lockheed Martin Corporation was their employer at the time of the March 23, 1998 meeting, and since Lockheed Martin Energy Systems, Inc. has acknowledged its standing as a properly named Respondent in this case, it is also recommended that the Motion of Lockheed Martin Corporation to be dismissed as a party respondent, be granted. Kesterson v. Y-12 Nuclear Weapons Plant, et al, 95-CAA-12 (ALJ, Aug. 5, 1996); ARB Case No. 96-173 (Apr. 8, 1997) cert. to 6th Cir., No. 97-3579 (ARB, Jan. 20, 1998); Varnadore v. Martin Marietta Energy Systems, et al, 95-CAA-2 et al (ARB, June 14. 1996); aff'd 141 F.3d 625 (6th Cir. 1998).

RESPONDENTS COSTS AND ATTORNEY FEES

This case is frivolous in the worst sense of the word and it offers a perfect example of why the Federal Rules of Civil Procedure provide for severe sanctions. I have researched the Secretary's expressions in other cases concerning the subject of Respondent's receipt of costs and attorney fees. The Secretary has left little doubt that in discovery related matters that any sanctions to be imposed are limited to those mentioned at 29 C.F.R. § 18.6(d)(2). Crosby v. Hughes Aircraft Co., 85-TSC-2 (Sec'y, Aug. 17, 1993) review denied, Crosby v. U.S. Dept. of Labor, Unpublished No. 93-70834, 53 F.3d 338 (9th Cir., Apr. 20 1995); Billings v. Tennessee Valley Authority, 89-ERA-16 (Sec'y, July 29, 1992); review denied, Tennessee Valley Authority v. Reich, Unpublished No. 92-3977, 25 F.3d 1050 (6th Cir., Jun. 1, 1994). It is the Secretary's belief that our procedural regulations provide exclusive remedies under circumstances where discovery related problems are involved.

Other Judges have attempted to tax attorney fees and costs where a Respondent was required to defend a frivolous suit or where vexatious conduct is demonstrated by the opposing party or counsel. The Secretary has once again concluded that the only remedy available for a vexatious pursuit of a groundless action is under 29 C.F.R. § 18.36(b) since that action was found to constitute dilatory, unethical, unreasonable or bad faith conduct. Rex v. Ebasco Service, Inc., 87-ERA-6 (Sec'y, Mar. 4, 1994); Saporito v. Florida Power and Light Company, 90-ERA-27 (Sec'y, Aug. 8, 1994). The Secretary appears to have concluded that Fed. R. Civ. P. 11 can have no application to any of these proceedings. Stack v. Preston Trucking Co., Case No. 89-STA-15 (Sec., Apr. 18, 1990).

It seems peculiar to me that the whistleblower regulations would provide authority for taxing costs and attorney fees against an accused, 29 C.F.R. § 24.6(b)(3), but no remedies are available which are meaningful to discourage Complainants or their counsel from filing frivolous complaints necessitating the expenditure by both government and employer of multiple thousands of dollars in defending frivolous actions. To conclude that Complainants' representative should be suspended under 29 C.F.R. § 18.36(b) from further participation in this case is now a moot point once the Motion for Summary Decision has been granted and the case is concluded. Rogers v. Multi-Amp Corp., 85-ERA-16 (Sec'y, Dec. 18, 1992). That sanction is of no benefit.

Complainants' factual allegations in this case are outrageous. Complainants' counsel have concocted allegations which are patently false. There is no evidence of any videotaping nor was there any taping performed in a surreptitious fashion. There is no evidence that the company made any assurances of the private nature of the March 23 meeting since the company was unaware that there was to be a private meeting. There is no evidence that the company was

spying on sick workers nor is there any evidence that any video tapes were broadcast by the company to the detriment of one or more of its employees. Each of these allegations is serious in nature and certainly deserves a full and fair hearing had they been true. They are not true and the documented facts support that conclusion.

The whistleblower laws involved here present some of the most important types of cases that the Administrative Law Judges in this office will hear. These matters are sensitive and the workers involved are entitled to protection and a full and fair hearing on any valid complaints. This case represents a clear abuse of that intended process, but unfortunately there exists no meaningful remedy by which to penalize Complainants' counsel for the unsavory pursuit of the complaints in these cases. This Judge has spent untold hours attempting to control the flow of this case, and in particular, the reams of computer generated paper disguised as discovery matters. We need some stronger help to control the process abuse evidenced by this record.

Based upon the provisions of 29 C.F.R. § 18.36, IT IS ORDERED that Edward A. Slavin, Jr. is hereby suspended from further participation before the Office of Administrative Law Judges in this case.

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RUDOLF L. JANSEN
Administrative Law Judge

NOTICE: This Recommended Decision and Order will automatically become the final order of the Secretary unless, pursuant to 29 C.F.R. § 24.8, a petition for review is timely filed with the Administrative Review Board, United States Department of Labor, Room S-4309, Frances Perkins Building, 200 Constitution Avenue, NW, Washington, DC 20210. Such a petition for review must be received by the Administrative Review Board within ten business days of the date of this Recommended Decision and Order, and shall be served on all parties and on the Chief Administrative Law Judge. See 29 C.F.R. §§ 24.8 and 24.9, as amended by 63 Fed. Reg. 6614 (1998).